IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6337 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GHANSHYAMBHAI CHHOTABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner No. 1

Mr. Mukesh Patel, APP for Respondent No. 1

MR A.J. Patel for Mr.AB MUNSHI for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: _01___/10/2001

C.A.V. JUDGEMENT

1. The petitioner, original accused No.1, by filing this application under Section 482 of the Code of

Criminal Procedure ('Code' for short), has prayed to quash complaint lodged by the respondent No.2 in the Court of the learned Chief Judicial Magistrate, Vadodara, which is numbered as Criminal Case No.103 of 2001, and has further prayed to set aside the order dated July 11, 2001, passed by the learned Chief Judicial Magistrate, Vadodara, by which the complaint filed by the respondent No.2 was sent for enquiry under Section 156(3) of the Code to the Economy Cell of D.C.B. Police Station, Vadodara.

2. The respondent No.2 has filed the complaint in the Court of the learned Chief Judicial Magistrate, Vadodara, against the petitioner and another accused person, namely, Vinubhai Ravjibhai Patel, for the offences punishable under Sections 403, 420, 463, 464, 465, 466, 467 read with Section 114 of the Indian Penal Code. As per the averments made in the complaint, the father of the complainant, Ukabhai Pujabhai Mali, was the exclusive owner of the land admeasuring 49068 sq.mtrs, bearing Revenue Survey No.142, situated at village Sarval, Taluka & District Vadodara. The father of the complainant, Ukabhai, expired on July 3, 1993 and, by Entry No.2888, the names of heirs of Ukabhai Pujabhai, were entered in the revenue record. The land is situated in the agricultural zone. By Entry no.2889, the land was entered in the name of the complainant as sole heir and legal representative of deceased Ukabhai Pujabhai. Since then, the complainant is the exclusive owner of the said land and is residing with his family there. As per the say of the complainant, he does not know the petitioner No.1 and the original accused No.2. It is alleged that the petitioner, on August 6, 1987, had forged a document on a stamp paper of Rs.10 by creating a false thumb impression of his father Ukabhai and the said forged document was styled as 'agreement to sell-cum-development agreement'. It is further alleged that on May 10, 1991 the petitioner and accused No.2 on a stamp paper had created a false and forged signature of the respondent No.2-complainant and had created false document in the nature of 'possession receipt'. It is alleged that the thumb impression and the signature were dishonestly forged in the above documents. It is further alleged in the complaint that both the accused persons on March 15, 2000 had created forged power of attorney on a stamp paper of Rs.100 by creating false signature of the complainant in the said power of attorney. It is alleged that the said forged power of attorney was alleged to have been executed by the complainant in favour of the accused No.2, Vinubhai Ravjibhai Patel. It is alleged that the complainant had not given any such power of

attorney in favour of the accused No.2 and the contents of the said power of attorney and the signature of the complainant were false. It is alleged that, by creating false document, as stated above, both the accused persons had conspired to grab the land by entering their names in the revenue record. It is further alleged that, with the help of the above-stated forged documents, the accused persons have filed Special Civil Suit No.482 of 2001 in the Civil Court against the complainant for specific performance of the agreement to sale and development agreement dated August 6, 1987 and the possession receipt alleged to have been executed on May 10, 1991. The complainant has alleged that the accused persons had deliberately not produced the original documents in the Civil Court, but had only produced xerox copies of the said forged documents. It is also alleged by the complainant that, when he came to know about the said false and forged documents, he had sought opinion of the finger-print and hand-writing Expert, which indicated that the said signatures of the complainant and the thumb impression of his father were forged. It is alleged by the complainant that the accused persons, by creating false, fabricated and forged documents, had tried to dishonestly misappropriate the land in question and have tried to cheat the complainant with the help of the said forged documents. It was further alleged in the complaint that the complaint had, prior to filing of the complaint in the Court, had lodged a complaint before the Police Commissioner, and the Police Inspector, Economy Cell, D.C.B. Police Station, Vadodara, on May 4, 2001, but, no action was taken against the accused persons and, therefore, the complainant had no other alternative but to file the said complaint in the Court of the learned Chief Judicial Magistrate, Vadodara. It may be mentioned that the complaint, as stated above, was lodged in the Court of the learned Chief Judicial Magistrate, Vadodara, on July 11, 2001 and the learned Chief Judicial Magistrate, Vadodara, by his order July 11, 2001, sent the complaint under the powers vested in the Court under Section 156(3) of the Code, to the Economy Cell of D.C.B. Police Station, Vadodara, directing it to investigate and submit its report within 30 days.

4. The petitioner, original accused No.1, by filing this application under Section 482 of the Code, has prayed to quash the complaint and set aside the order passed by the learned Chief Judicial Magistrate, Vadodara, under Section 156(3) of the Code, directing the Economy Cell of D.C.B. Police Station, Vadodara, to investigate the allegations made in the complaint and submit its report.

5. Heard learned counsel, Mr. N.K. Majmudar for the petitioner, learned Additional Public Prosecutor, Mr. Mukesh Patel for respondent No.1 and learned counsel Mr. A.J. Patel for respondent No.2.

6. Learned counsel Mr. N.K. Majmudar, appearing for the petitioner, has submitted that the complaint, essentially, relates to a civil dispute, for which the complaint had taken resort to filing of this complaint for offences under various Sections of the Indian Penal Code just to bring pressure on the petitioner and other accused persons with a view to snatch away the land in question. The learned counsel for the petitioner has submitted that the complaint was manifestly barred by provisions of Section 195 of the Code as the complainant was not competent to file the complaint and the complaint can only be filed by the competent court in which forged document is produced. The learned counsel for the petitioner, in support of his submission, relied upon the judgment of the Supreme Court in the case of Gopalakirshna Menon and another vs. D. Raja Reddy and another, reported in AIR 1983 Supreme Court 1053, wherein, it is ruled that, when the forged receipt or document is produced in the Court and the offences under Sections 463 and 467 of the Indian Penal Code are made out, it is the Court who can file the complaint and the complaint lodged by the private person was clearly barred by the provision of Section 195(1)(b)(i) of the Code. The learned counsel for the petitioner has also placed reliance on the decision of the Supreme Court in the case of Surjit Singh and others vs. Balbir Singh, reported in AIR 1996 Supreme Court 1592, in support of the submission that, for taking cognizance of an offence, the document, the foundation for forgery, if is produced before the Court or given in evidence, the bar of taking cognizance under Section 195(1)(b)(ii) gets attracted and the criminal Court is prohibited to take cognizance of offence unless a complaint in writing is filed as per the procedure prescribed under Section 340 of the Code by or on behalf of the Court. Reliance is also placed by the learned counsel for the petitioner on the decision of the Supreme Court in the case of Chandrapal Singh and others vs. Maharaj Singh and another, reported in AIR 1982 Supreme Court 1238, in support of the submission that, if false evidence was given in a judicial proceeding before a civil court and the persons giving such false evidence have committed an offence under Section 193 Indian Penal Code, no Court can take cognizance of such offence except on a complaint in writing of that Court.

7. On the other hand, the learned counsel for the respondent No.2-original complainant, Mr. A.J. Patel, has vehemently submitted that the bar under Section 195 of the Code will not apply to the facts of the present case because the forged documents were created in the years 1987 and 1991 i.e prior to institution of the legal proceedings in the competent Court. It is submitted by the learned counsel for the respondent No.2 that the bar under Section 195 of the Code would get attracted only when the said documents were forged during the course of the proceedings before the Court. It is submitted by the learned counsel for the respondent No.2 that, as false and forged documents were created prior to filing of the suit, it was within the power of the complainant to lodge the complaint in the criminal court for the offences in question. The learned counsel for the respondent No.2, in support of his submission, has placed reliance on the decision of the Supreme Court in the case of Sachida Nand Singh and another vs. State of Bihar and another, reported in AIR 1998 Supreme Court 1121. The Apex Court in the above decision has ruled that, "the bar contained in S.195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court. The scope of the preliminary enquiry envisaged in S.340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court". It is further ruled that, "to attract the bar under Section 195(1)(b)(ii) of the Code, the offence should have been committed during the time when the document was in custodia legis". In my view, the principle laid down in the case of Sachida Nand Singh (supra) will apply in all fours to the facts of the present case. In the complaint, nowhere it is alleged that the said forged documents created by the petitioner and the original accused No. 2 were produced before the Court. Therefore, in my view, the contention raised by the learned counsel for the petitioner that, in view of the bar contained in Section 195(1)(b)(ii) of the Code, the present complaint is required to be quashed, deserves to be rejected.

8. The submission of the learned counsel for the petitioner that the complaint lodged by the respondent No.2 is essentially a civil dispute and, therefore, the complaint deserves to be quashed, also is devoid of any merit. It is settled law that the facts may give rise to a civil claim and also amounts to a criminal offence. Merely because a civil claim is maintainable, it does not mean that no criminal offence can be investigated. When

grave allegations of serious nature have been made in the complaint, which, prima facie, constitute and satisfy the ingredients of the offences for which the complaint is filed, it was within powers of the learned trial Magistrate to pass orders under Section 156(3) of the Code directing the Investigating Agency to find out the truth of the allegations made in the complaint. It would be hazardous at this stage to observe anything in respect of the allegations made in the complaint, because the allegations made in the complaint are yet to be investigated by the D.C.B. Police Station. Still, the trial Magistrate has not taken cognizance of the complaint and has merely forwarded it for investigation to the Investigating Agency. In the case of Manohar M. Galani vs. Ashok N. Advani and another, reported in (1999) 8 Supreme Court Cases 737, the Apex Court has ruled that the High Court was not justified in quashing the proceedings by an elaborate discussion on the merits of the matter and in coming to the conclusion that Section 195 of the Code of Criminal Procedure will be a bar. The Supreme Court, in paragraph 5 in the above decision, has held as under:

"In our opinion, it was rather premature for the High Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations is being throttled. We, therefore, set aside the orders quashing the two complaints and the investigation made thereunder and direct that those cases may proceed in accordance with law."

9. It has been held by the Apex Court in a catena of decisions that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. When serious allegations have been levelled against the accused persons and when the trial Magistrate had ordered investigation under Section 156(3) of the code, this Court cannot throttle the investigation by quashing the complaint. The inherent power of the Court under section 482 of the Code should be very sparingly and cautiously used only when the Court comes to the conclusion that there would be manifest injustice and there would be abuse of process of the Court, if such power is not exercised. Keeping in view the aforesaid limited jurisdiction, in my view, when the allegations

made in the complaint, prima facie, satisfy the ingredients of the offences, and when the trial Magistrate had ordered investigation under Section 156(3) of the Code, this Court cannot interfere with the order dated July 11, 2001, passed by the trial Magistrate and quash the complaint.

10. As a result of foregoing discussion, this application is dismissed. Notice is discharged. The ad-interim relief is vacated.

October 01, 2001 (M.H. Kadri, J.)

11. After pronouncement of the judgment, the learned counsel for the petitioner has requested to extend the interim relief granted earlier so as to enable the petitioner to approach the Supreme Court. Having heard the learned counsel for the parties and the learned Additional Public Prosecutor, the ad-interim relief granted by this Court in terms of paragraph 10(C) is continued till October 22, 2001.

October 01, 2001 (M.H. Kadri, J.)